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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,305	04/19/2004	Bi-Chih Liao	BHT-3092-428	9827
7590	10/07/2004		EXAMINER	
BRUCE H. TROXELL SUITE 1404 5205 LEESBURG PIKE FALLS CHURCH, VA 22041			SALDANO, LISA M	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/826,305	LIAO, BI-CHIH
	Examiner Lisa M. Saldano	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 April 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 19 April 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “pipe opening at a proximate side combined with an opening of said external pocket and a pocket opening disposed at an appropriate position of the other end” must be shown or the feature(s) canceled from the claim(s). The drawings as originally filed fail to illustrate an internal pocket with two openings, those openings being 1) a pipe opening and 2) a pocket opening. Instead the drawings only show an internal pocket with one opening. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Specifically, the applicant recites limitations in claim 4, wherein “said filler external pocket [sic] and internal pocket are made of weaved cloth.” The claim language is confusing, so it is not clear to the examiner whether the claim is reciting that the filler is made from weaved cloth. If the applicant intends to claim that the filler is made from weaved cloth, the specification provides no basis for this limitation.

*Claim Objections*

3. Claim 4 is objected to because of the following informalities: Specifically, the applicant recites limitations in claim 4, wherein “said filler external pocket [sic] and internal pocket are made of weaved cloth.” The claim language is confusing, so it is not clear to the examiner whether the claim is reciting that the filler is made from weaved cloth. If the applicant intends to claim that the filler is made from weaved cloth, the specification provides no basis for this limitation. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims language is indefinite and confusing.

Regarding claim 1, the claim language appears to recite an internal pocket with “a pipe opening at a proximate side...” It is not clear what the applicant is claiming by stating “a proximate side.” The definition of proximate is “close or very near.” However, the claim fails to make clear what the claimed side is very near or close to. Furthermore, the claim discloses a “pocket opening disposed at an appropriate position in the other end...” However, it is not clear what the applicant is claiming with the language “the other end.” It is not clear what aspect of the invention the limitation “the other end” is in reference to.

Regarding claim 3, line 2, the applicant recites limitations whereby a small vibrator is driven by a “No.3 dry cell battery.” It is not clear what the applicant intends to claim by the phrase “No.3 dry cell battery.”

Regarding claim 9, line 1, the applicant appears to have misspelled the word “device.” Furthermore, the claim language from which this claim depends claims a latch device disposed at said opening and another latch device (see claims 1 and 8). It is not clear in claim 9 whether the applicant is claiming the first mentioned latch device or the second mentioned latch device.

The prior art rejection has been provided based on the examiner’s best understood interpretation of the applicant’s claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pistay (5,344,437) in view of Phillips et al (2,943,621).

Pistay discloses a massaging therapeutic pillow 10 with a removable vibrating massage assembly 40 (see Figs. 1-5 and column 4, lines 40-60). Pistay discloses an external pocket 30 having an opening with a latch device 15 disposed at the opening defining a pocket chamber. Pistay further discloses an internal pocket 42 having an opening combined with the opening of the external pocket (see Fig.3). The internal pocket 42 defines a pipe chamber that accommodate

a vibrator 44. Soft filler foam material 54 is passed through the opening of cavity 42 filling the internal pocket chamber 42 of vibrating massage assembly 40. The pocket opening is sealed to constitute a massage pillow. Pistay further disclose that the entire vibration massaging assembly 40 can be removed from cavity 42 for easy replacement or batteries 52.

Regarding claims 2 and 3, Pistay discloses that the vibrator 44 comprises a small motor and an on-off switch that drives an eccentric weight by direct current provided by two one and one-half volt batteries (see column 4, lines 40-50).

Regarding claim 4, Pistay discloses that the pillow 10 is made from cloth material 15 (see column 3, lines 60-70). The cloth material disclosed does not preclude the use of weaved cloth material.

Regarding claims 6 and 9, Pistay discloses a zipper 46 that closes an opening of the pillow (see column 4, lines 57-60).

However, Pistay fails to disclose that the internal pocket comprises a pocket opening disposed on another end.

Phillips et al disclose a vibrating pillow 10 comprising an envelope 11 wherein filling material is placed (see Figs. 1&2). Phillips et al disclose a pocket opening 19 disposed on an appropriate end for blowing soft material into the envelope.

Regarding claims 7 and 8, Phillips et al further disclose that the opening 19 is then closed by stitching or the like to complete the vibrating cushion assembly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the vibration massaging assembly of Pistay to incorporate the openings disposed on an appropriate end, as taught by Phillips et al because both inventions are directed to providing a

vibrating pillow assembly. It would be obvious to provide an opening in an end or a side or wherever one desired to dispose filler material into the pillow. The placement of the opening is a matter of design choice. Furthermore, placement of the filler opening on a side of the pillow assembly allows one to fill the pillow in a location that does not conflict with the location of the vibrating mechanisms and other hardware.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pistay in view of Phillips et al as applied to claim 1 above, and further in view of Wang (US2002/0096097). Pistay and Phillips et al disclose features that are described above.

However, Pistay and Phillips et al fail to disclose that the fill material for the pillow comprises a polylon.

Wang discloses three-dimensional embroidery comprising filling material 20 added into fabric 10. The fill material is a piece of polylon (see page 1, paragraph [0019]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the filling material of the Pistay pillow to comprise polylon material, as taught by Wang, because the selected filler material is a matter of design choice. A polylon filler material is a functional equivalent filling material for the Pistay pillow.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ramey (4,257,408), Ramey (4,136,685), O'Leary (1,617,822), Brady (4,935,972) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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